IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.3955 of 2006

Date of decision: 16.10.2006

Smt. Sheela Devi and ors.

..... Petitioners.

Versus

Smt. Nirmla and ors.

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Ashok Gupta, Advocate
for the petitioners.

Mr. R.N. Lohan, Advocate
for respondent Nos.1 to 5.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed challenging the order dated 08.06.2006 vide which an application filed by the defendant-petitioners to lead additional evidence has been declined.

A reading of the order passed by learned Civil Judge (Junior Division), Ambala would show that the defendants wished to place on record plaint, written statement and replication comprising the pleadings in an earlier suit between the same parties and also the issues framed in the earlier suit. The suit was instituted in the year 1996. At the stage when the entire evidence had been concluded, the present application was filed by the petitioners-defendants. The application was resisted by the respondent-

plaintiffs in the suit. It was contended that after the amendment of the Code of Civil Procedure, the provisions of Order 18 Rule 17-A CPC stands deleted. However, this Court has introduced Rule 16-A in Order 18 of CPC dealing with production of additional evidence, the same reads as hereunder:-

> "16A: Production of evidence not previously known or which could not be produced despite due diligence:- Where a party satisfies the court that after the exercise of due diligence, any evidence was not within his knowledge or could not be produced by him at the time when that party was leading his evidence, the Court may permit that party to produce that evidence at a later stage or such terms as may appear to it be just.
>
> Provided that no party shall be entitled to get more than two effective opportunities to produce such evidence after the grant of application by the court."

On the basis of aforesaid, it is contended that in the earlier suit the judgment of the first appellate Court was delivered in the year 1999. At that stage itself, the petitioners were free to obtain the certified copies of the remaining documents which could have been produced. It is not a case where the evidence now sought to be produced was not within the knowledge of the petitioners or could not have been produced at the time when the petitioner was leading his evidence. He further submits that at this stage if the same is permitted to be produced it would cause prejudice to the plaintiffs.

I have heard learned counsel for the parties and examined the order passed by the learned trial Court.

A reading of the order would show that the judgments passed by the trial Court and the lower Appellate Court in the earlier suit between the parties have already been exhibited on the record. I agree with the view taken by the trial court that the present case would not fall within the ambit of Order 18 Rule 16-A of Code of Civil Procedure as the plaintiffs could have obtained the certified copies of the plaint, written statement and replication, which could have been produced at the time when the aforementioned judgments were produced. It can not be said to be a case where the petitioner after due diligence did not have knowledge of the aforesaid documents. Still further I am of the opinion that the interest of the petitioner is sufficiently secured as both the judgments are already on the record, which would contain the pleadings, issues and also the ultimate decision taken by the Court. For the reasons aforementioned, I find no error in the view taken by the trial Court.

The present revision petition is accordingly dismissed.

October 16,2006 **(P.S. PATWALIA)**
dinesh **JUDGE**